

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSEPH GIANNETTO,

Plaintiff,

-against-

WASHINGTON MUTUAL BANK,

Defendant.

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ROSS, United States District Judge:

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04-CV-4205 (ARR)(RER)

NOT FOR ELECTRONIC  
OR PRINT  
PUBLICATION

OPINION AND ORDER

The court has received the Report and Recommendation on the instant case dated December 26, 2006 from the Honorable Ramon E. Reyes, Jr., United States Magistrate Judge. No objections have been filed. Having conducted a de novo review of the record, the court hereby adopts the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) on the ground that plaintiff has failed to make a sufficient showing that the denial of health benefits to plaintiff by defendant's plan administrator was arbitrary and capricious. The court further agrees with Magistrate Judge Reyes that plaintiff did not properly assert a breach of fiduciary duty claim in his complaint or by motion to amend the complaint, and, therefore, such a claim is not before the court. Accordingly, the court grants defendant's motion for summary judgment and dismisses plaintiff's complaint in its entirety. The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.

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Allyne R. Ross  
United States District Judge

Dated: March 28, 2007  
Brooklyn, New York

SERVICE LIST:

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cc: Magistrate Judge Reyes